

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DERRICK DALE FONTROY, et al., : CIVIL ACTION
 :
 : Plaintiffs :
 :
 : v. :
GOVERNOR MARK SCHWEIKER, et al., :
 : Defendants : NO. 02-CV-2949

ORDER

AND NOW, this day of 2006, it is ORDERED that
Plaintiffs' Motion For Expedited Video Conference and Emergency Injunction
(Document No. 246) is DENIED, without prejudice to the same motion as filed
in No. 03-cv-4826.

BY THE COURT:

TIMOTHY J. SAVAGE, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DERRICK DALE FONTROY, et al., : CIVIL ACTION
Plaintiffs :
v. :
GOVERNOR MARK SCHWEIKER, et al., :
Defendants : NO. 02-CV-2949

DEFENDANTS' RESPONSE IN OPPOSITION TO MOTION
FOR EXPEDITED VIDEO CONFERENCE AND
EMERGENCY INJUNCTION (DOCUMENT NO. 246)

Plaintiffs Savage and Fontroy have filed a Motion for Expedited Video Conference and Emergency Injunction, docketed as Document No. 246. It seeks to enjoin the defendants from transferring plaintiff Savage from SCI-Graterford to another prison operated by the Pennsylvania Department of Corrections. Savage and Fontroy filed the same motion in another civil action pending in this Court, No. 03-cv-4826, Document 327, where the same four plaintiffs are suing a number of Department of Corrections officials and employees, including the Secretary of Corrections and the Graterford Superintendent. The Court should deny the Motion as filed in this case without prejudice to its proceeding in No. 03-cv-4826.

The Court should deny the Motion as filed in this case because it is redundant. The Motion is already being considered by the Court in No. 03-cv-4826. The judge assigned to that case, Judge Yohn, has held a conference on it and will hold a hearing on it on January 31, 2006. Two judges cannot, or at least should not, consider the same Motion.

The Court should also deny the Motion because on November 22, 2005, at plaintiff's request, the Court stayed all proceedings in this case (Document 241). The Court has not lifted this stay.

The Court should also deny this Motion for the same reason that it has denied many of plaintiffs' previous motions: it is not related to the issues in this case. See Order entered November 22, 2005 re Motion for Temporary Restraining Order (Document No. 244). The issues in this case have to do with the Department of Corrections policy and procedure for mail sent to inmates by courts and attorneys. The present Motion seeks to enjoin a transfer of Savage from one Department prison to another. An injunction against transfer would have no effect on the mail policy or procedures applied to Savage or any of the other plaintiffs. Transfer of Savage will not adversely change his status regarding the Department's mail policy. No facts or legal arguments relevant to the present Motion will say anything about likelihood of success on the merits of the mail issues.

Nothing about the status of this case suggests that plaintiff Savage cannot be transferred. Cross Motions for Summary Judgment have been fully briefed, and the Court is awaiting possible guidance from the Court of Appeals in several cases pending before it. See Order filed May 6, 2005 (Document 227). Plaintiff Savage can wait at another prison as easily as he can wait at Graterford.

To the extent necessary, defendants here rely on, and incorporate, the responses of the defendants to the merits of the Motion that they have presented and will present in No. 03-cv-4826.

THOMAS W. CORBETT, JR.
Attorney General of Pennsylvania

By: s/ John O. J. Shellenberger

Office of Attorney General
21 S. 12th Street, 3rd Floor
Philadelphia, PA 19107
Phone: (215) 560-2940
Fax: (215) 560-1031

John O. J. Shellenberger
Chief Deputy Attorney General
Attorney I.D. No. 09714
Attorney for Defendants

CERTIFICATE OF SERVICE

I, John O. J. Shellenberger, hereby certify that Defendants' Response in Opposition to Plaintiffs' Motion For Expedited Video Conference And Emergency Injunction (Document No. 246) has been filed electronically and is available for viewing and downloading from the Court's Electronic Case Filing System. I further certify that a true and correct copy of Defendants' Response in Opposition to Plaintiffs' Motion For Expedited Video Conference And Emergency Injunction (Document No. 246) was mailed on January 11, 2006 by first class mail, postage prepaid to:

Derrick Dale Fontroy, AY-7513
Theodore B. Savage, CB-2674
Aaron Christopher Wheeler, BZ-2590
James S. Pavlichko, DK-0199
State Correctional Institution at Graterford
P.O. Box 244
Graterford, PA 19426-0244

s/ John O. J. Shellenberger

John O. J. Shellenberger
Chief Deputy Attorney General
Attorney I.D. No. 09714

Office of Attorney General
21 S. 12th Street, 3rd Floor
Philadelphia, PA 19107
Phone: (215) 560-2940
Fax: (215) 560-1031